

Kenai National Wildlife Refuge
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COMPATIBILITY DETERMINATION

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.

Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).

Use: Powerboats and Fixed-wing Aircraft

Refuge: Kenai National Wildlife Refuge

Establishing and Acquisition Authorities: The Refuge was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The boundaries were modified, purposes expanded, and name changed to Kenai National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

Refuge Purposes: The Executive Order purpose was primarily to “... protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska...”. ANILCA purposes for the Refuge include: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation.” The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System,

and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complimentary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which national wildlife refuges are established and administered. These purposes are applied to the approximately 1.3 million acres of Congressionally designated wilderness within the Refuge. While these purposes do not apply to the remaining approximately 700,000 acres of Refuge lands that are not designated as wilderness, we must consider the effects of uses on any refuge lands that might affect the wilderness areas.

National Wildlife Refuge System Mission: The National Wildlife Refuge System Mission is “To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use: This compatibility determination covers two distinctly different uses: fixed-wing aircraft use, and the use of power (motor) boats. Both of these uses are often employed access methods for other specific uses, such as means to reach a Refuge location for hunting or fishing activities. The uses are also uses unto themselves, however, and boating and flying are recreational pursuits enjoyed as the primary activity of the outing. Both activities are extremely popular in Alaska, have traditional use histories that predate ANILCA, and have special mention within ANILCA to help preserve traditional access means.

Fixed-wing aircraft use generally, includes personal, commercial, agency and military use. Rotary aircraft (helicopters) may be approved on a case-by-case basis for specific mission related activities (scientific investigations, search and rescue, etc.). Refuge regulations and oversight of aircraft use do not extend to the airspace over the Refuge, but do include all surface use including the landing, take-off, taxiing, practicing touch and goes, storage, and dropping people or items from the air to the ground (including aerial equipment drops or pesticide spraying). Fixed-wing aircraft include both single and multi-engine aircraft, though by far the most use is with small single engine craft. It also includes aircraft equipped with various types of landing gear such as tundra tires, floats, skis, or combination gear such as amphibious floats or wheel-skis. All commercial use (such as air taxi operations), military exercises, special events (such as air shows) require a special use permit. Personal and general recreational uses of standard fixed-wing aircraft do not require a Refuge permit.

Most fixed-wing aircraft use on the Refuge comes from small single-engine 2 to 6 passenger craft, such as Piper Super Cubs, Cessna 170s, 180, 185s, 206s and similar and slightly larger craft such as De Havilland Beaver aircraft. Upland landing areas are restricted on the Refuge to only a few areas, including portions of the beach in the Chickaloon Bay area. Float equipped airplanes, however, and ski equipped aircraft in winter, have hundreds of small lakes, and a few stretches of river, available for landing. Some lakes have been closed to aircraft landing seasonally or permanently to protect Refuge resources. Alaska has more small planes per capita than any other State in the Country and with the majority of Alaskans living in the Anchorage area within a 30

minute airplane flight of the Refuge, Kenai National Wildlife Refuge may have more fixed-wing aircraft use than any other refuge in the National Wildlife Refuge System.

Fixed-wing aircraft use is enjoyed in support of summer fishing on lakes and streams, ice fishing in winter, site seeing, hunting for moose and other wildlife, access to remote cabins and locations for both short and longer stays, and a host of other activities on the Refuge. The highest use of the Refuge occurs in summer and early fall in support of fishing, hunting, and site-seeing activities.

Smaller, personal aircraft, such as powered parachutes and ultra-lights are generally prohibited but may be permitted consistent with 50 CFR 27.34 and 36.39. Gliders and hang-gliders are not included within this compatibility review and are currently not allowed to be used on the Refuge.

Motor boats include all categories of vessels licensed as motorboats by the State of Alaska and meet all Federal and State legal standards. Motorboats include large fishing boats, river boats, canoes and rafts with small outboard motors attached, and similar vessels. Airboats, hydro-foil or air cushion vessels, and jet skis are specifically prohibited by Refuge regulation and are not included.

Motorboats, like airplanes are most commonly used to provide access for traditional activities such as hunting and fishing, camping, etc. Because of the expense, boats are much more commonly owned and used by local residents compared to airplanes. Multiple State and Federal regulations restrict the type of motorboat use in certain areas (see “Stipulations Necessary to Ensure Compatibility” below).

While good estimates for total use of motorboats and fixed-wing aircraft on the Refuge do not exist, it is commonly accepted that such use is steadily increasing as the area’s human population increases (approximately 10 to 25 percent every 10 years or so in recent decades).

Availability of Resources: Administering public use programs on the Refuge requires multiple staff assigned responsibilities ranging from providing desired information when requested, to undertaking law enforcement and search and rescue responsibilities. The Refuge must consider its primary purposes for conservation while facilitating public uses, and must ensure that the uses are as safe as practicable. Refuge staffing and funding has grown over time to accommodate these needs. While no new use is being proposed, levels of use are likely to continue to increase, and if so, Refuge staffing and support funding must also rise commensurate with the increased need. Close monitoring of the Refuge’s management capabilities will be required.

Anticipated Impacts of the Use: The use of motorized equipment, in this case boats and fixed-wing aircraft, can cause noise disturbances to both wildlife and other Refuge users. Complaints from moose hunters, for example, have stated that in portions of the Refuge it is near impossible during the last few days of moose season to reasonably call a moose (or hear one calling) because of the near constant drone of aircraft engines flying overhead, many looking for the same moose that hunters on the ground are trying to call (though it is not legal to land and shoot the same day as flying, nor transmit wildlife locations from the aircraft to hunters on the ground). Concerns over disturbance to wildlife have generated regulations to protect trumpeter swans, from both aircraft and motorboat disturbances. Other species, such as brown bears, wolves, wolverines, loons, and harlequin ducks are also known to be sensitive to noise and related disturbance. The most sensitive times of year for water birds, during nesting and molting, are also a heavily used period of time by boats and aircraft.

Motorboats and fixed-wing aircraft have a visual disturbance beyond the audible one, allow for people to reach remote areas with some ease resulting in potential increased legal and illegal harvest of fish and wildlife, may cause impacts because of oil or gas spills or from unburned hydrocarbons, and can cause habitat damage such as landing an aircraft on sensitive beach grasses or mooring a boat where wind and wave action may result in the boat digging out bank habitat. Motorboats also can cause wakes that may wash away bank habitat resulting in increased erosion and loss of fish rearing habitat.

Human safety concerns can present themselves when motorboats or aircraft are operated improperly. Most years see at least one fatality on the Refuge related to aircraft or motorboat use with dozens of accidents also occurring. Most often these situations are influenced by inappropriate loading, speed, failure to use safety equipment, inexperience – or other human error – or by weather or other natural causes.

Public Review and Comment: This compatibility determination has been prepared while revising the Refuge's Comprehensive Conservation Plan and Environmental Impact Statement. Future revisions can be accomplished outside of this planning process if deemed necessary and would be completed with public notice and involvement. Legal notice of the draft compatibility determination was published in the Anchorage Daily News and Kenai Peninsula Clarion on February 25, 2007 which initiated a 45-day public comment period. The notice was also posted on a bulletin board at the Refuge headquarters for the same time period, made available starting February 28, 2007 on a list server fws-akrefugecompatibility@lists.fws.gov to 137 addresses, and made available on the Regional Refuge Planning web site at <http://alaska.fws.gov/nwr/planning/completed.htm>.

Comments on some or all of the (15) compatibility determinations were received from: The State of Alaska, The Wilderness Society, The National Wildlife Refuge Association, Friends of Kenai National Wildlife Refuge, Alaska Trappers Association, Defenders of Wildlife, Kenai Field Office (FWS), and The Humane Society of the United States.

Defenders of Wildlife supported existing restrictions in place on motorboats and aircraft use on the refuge, but felt additional restrictions were needed. They felt both boats and floatplanes can serve to spread invasive plant species and that stipulations should be enacted to address this concern. They also expressed concern about airplane noise and stated that airplane use should be curtailed if they are interfering with wildlife-dependent recreational uses. Finally, they recommended that the Refuge work with FAA to include regulations dealing with airspace over wilderness areas.

The State of Alaska supported the finding but suggested numerous wording changes. Additionally, the State expressed concern about the restrictions on aircraft landings on lakes in association with the protection of trumpeter swans.

Current Refuge regulations are believed to ensure compatibility and continued traditional use by motorboats and fixed-wing aircraft. At some level of increased use in time or place, compatibility decisions may need to be reviewed. Introduction and spread of invasive species, noise and other disturbance factors, and other direct or indirect impacts associated with these motorized access methods are important and will be continued to be evaluated; however, the Refuge believes current types and levels of use remain compatible.

Determination (check one below):

_____ Use is Not Compatible

 X Use is Compatible With Following Stipulations

Stipulations Necessary to Ensure Compatibility: All commercial uses of fixed-wing aircraft and motorboats, require a special use permit. Such permits include individual stipulations to help ensure compatibility and public safety. The Refuge Manager also has regulatory authority to temporarily or permanently restrict a use for cause. State and Federal regulations place many restrictions on the use of motorboats and aircraft, including licensing requirements, no wake zones, landing prohibitions, flight advisories, outboard motor restrictions, and similar oversight. Refuge regulations (50 CFR 36.39 (i)(1) &(2)) provide specific guidance on operating aircraft and motorboats, respectively, to ensure compatibility with Refuge purposes.

These general rules include:

Aircraft

The operation of wheeled aircraft is only authorized on an un-maintained airstrip adjacent Big Indian Creek, on gravel areas within ½ mile of Wusnesenski Glacier, within the SE ¼ section 16 and SW ¼ section 15 T. 4 S., R. 8 W., Seward Meridian, and in designated areas within the Chickaloon Flats area (depicted on a map available from the Refuge).

Within the Canoe Lakes (Dave Spenser), Andy Simons, and Mystery Creek units of Kenai Wilderness, only the following lakes are open for airplane operations: Bedlam, Bird, Cook, Grouse, King, Mull, Nekutak, Norak, Sandpiper, Scenic, Shoepac, Snowshoe, Taiga, Tangerra, Vogel, Wilderness, Emerald, Green, Harvey, High, Iceberg, Kolomin, Lower Russian, Martin, Pothole, Twin, Upper Russian, Windy, Dinglestadt Glacier (terminus), Wusnesenski Glacier (terminus), Tustumena (all Wilderness lakes within one mile), all unnamed lakes in sections 1 & 2, T. 1 S., R. 10 W., and sections 4, 5, 8, & 9, T. 1 S., R. 9 W., and section 11, T. 6 N., R. 5 W., Seward Meridian, Alaska. Also, Pepper, Gene, and Swanson Lakes are only open for aircraft use for sport ice fishing.

Airplanes may operate on all lakes outside the Kenai Wilderness, except those lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. Non-wilderness lakes closed to aircraft operations include Afonasi, Anertz, Breeze, Cashka, Dabbler, Dolly Varden, Forest, Imeri, Lili, Mosquito, Rainbow, Silver, Upper Jean, Watson, Weed, and West. Additionally, all lakes in the Skilak Loop Area are closed to aircraft except Bottenintnin Lake (open year round) and Hidden Lake (open for sport ice fishing only). Finally, Headquarters Lake, near Soldotna, is restricted to administrative use only.

All rivers and streams of the Refuge are closed to the operation of aircraft except on the Kasilof River, Chickaloon River outlet, and the Kenai River below Skilak Lake from June 15 through March 14.

Notwithstanding any other provision of Refuge regulations, the operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or

their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10 inclusive.

The above restrictions on float plane operation and lake closures have, at least in part, proven successful in protecting trumpeter swans and helping meet other objectives supportive of Refuge management goals. Slight adjustments to these restrictions may still provide acceptable results; however, additional restrictions in the future may prove equally warranted to ensure compatibility as use levels may increase, certain wildlife populations may struggle to be sustained, or new information becomes available on the impacts associated with the use.

Motorboats

Motorboats are not allowed within the Canoe Lakes/Dave Spenser Unit of Kenai Wilderness except those lakes designated also open to aircraft operation. The section of the Kenai River downstream from Skilak Lake three miles is closed to motorboat use between March 15 and June 14, inclusive. The section of the Kenai River from the powerline crossing below the confluence of the Russian River, downstream to Skilak Lake, is closed to motorboats.

Motors in excess of 10 horsepower are not permitted on the Moose, Swanson, Funny, Chickaloon (upstream mile 7.5), Killey, and Fox Rivers.

A no wake zone restriction applies to Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden and Rainbow Lakes.

Notwithstanding any other provision of Refuge regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10, inclusive.

The use of air cushion, airboat, or other motorized watercraft, except motorboats, is not allowed on Kenai NWR, except as may be authorized by a special use permit from the Refuge Manager.

Justification: Traditional uses of motorboats and airplanes have special mention in ANILCA. Section 1110 (a) of the Act provides that, "...the Secretary shall permit...the use of...motorboats, airplanes...for traditional activities (where such activities are permitted by this Act or other law)... Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units...and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area." Such legal guidance allows for reasonable restrictions on the uses to protect Refuge resources but also protects the uses from prohibition without significant cause. All uses of national wildlife refuges must be authorized (and found compatible) to be allowed, and the Act recognizes this requirement when speaking to "where such activities are permitted by this Act or other law." While not all uses that might be evaluated have been authorized historically on Kenai National Wildlife Refuge, the use of motorboats and airplanes most certainly has, and were regulated in various fashions even prior to the passage of ANILCA. The Act's guidance provides for reasonable regulation to protect a variety of resource values. This has been done at Kenai. Fish and wildlife and habitat conservation concerns, wilderness resource protection, public safety, and other resource management concerns have been taken into consideration in the over 65 years of Refuge administrative history. Current regulations, permit requirements, and emergency authorities adequately address the most

significant Refuge concerns over impacts from airplanes and motorboats where the Refuge has authority. The largest seemingly unmitigated impact is the concerns associated with increasing levels of aircraft over-flights and the associated disturbance this may have to wildlife and Refuge visitors. The Refuge, however, does not have the general authority to regulate airspace over the Refuge.

Signature (Refuge Manager): /s/ Robin L. West 6/13/07
Signature and Date

Concurrence (Regional Chief): /s/ Todd J. Logan 8/14/07
Signature and Date

Mandatory 10-year Re-evaluation Date: 8/14/17